

[Senate Bill 433](#) (Berryhill)

Date: 05/07/15

Program: Motor Vehicle and Diesel Fuels

Sponsor: BOE Member Ma

Revenue and Taxation Code Sections 7360 and 60050

Effective: January 1, 2016

BOE Position: Support

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Summary: Requires the Department of Finance (DOF), instead of the Board of Equalization (BOE), to determine the annual excise tax rate adjustment for motor vehicle fuel (gasoline) and diesel fuel under the “fuel tax swap” provisions for the next five years.

Summary of Amendments: The amendments since the previous analysis require DOF to make the fuel tax swap calculation for a five fiscal year (FY) period, after which the BOE will resume the fuel tax swap calculation responsibilities.

Purpose: To temporarily shift the responsibility of rate setting to the agency that can best perform the fuel tax swap calculations.

Fiscal Impact Summary: This bill does not affect motor vehicle fuel or diesel fuel tax revenues.

Existing Law: The BOE determines and sets rates for various tax and fee programs it administers, such as the tobacco products tax rate,¹ diesel interstate users tax rate,² hazardous substances program fees,³ and the occupational lead poisoning prevention fee.⁴ These rates are calculated by BOE staff based on prescribed methodologies and the BOE Members approve these rates annually in a public meeting.

In 2010, two “fuel tax swap” measures⁵ were enacted that changed the imposition and rates of state taxes on gasoline and diesel fuel, and require the BOE to determine the appropriate excise tax rate adjustments to maintain revenue neutrality. The gasoline tax changes became operative on July 1, 2010, and the diesel fuel tax changes became operative July 1, 2011.

These provisions⁶ exempted sales and purchases of gasoline from the state General Fund sales and use tax rate (currently, a 5% exemption). To offset the revenue loss related to this partial exemption, the Legislature increased the gasoline excise tax rate from \$0.18 per gallon to \$0.353 per gallon.⁷

In contrast, the Legislature⁸ *reduced* the diesel fuel excise tax rate from \$0.18 to \$0.13 per gallon. The Legislature⁹ *increased* the sales and use tax rate on diesel fuel sales and purchases to offset the loss related to the diesel fuel excise tax rate reduction, resulting in the following rates:

- 1.87% effective July 1, 2011
- 2.17% effective July 1, 2012
- 1.94% effective July 1, 2013

¹ Revenue and Taxation Code (RTC) Section 30126.

² RTC Section 60115.

³ Health and Safety Code Sections 25174.2, 25205.4-25205.7, 25205.14.

⁴ Health and Safety Code Section 105190.

⁵ [ABx8 6](#), (Ch. 11, Statutes 2010) and [SB 70](#) (Ch. 9, Stats. 2010). These provisions were reenacted in 2011 by [AB 105](#) (Ch. 6, Stats. 2011).

⁶ RTC Section 6357.7.

⁷ RTC Section 7360.

⁸ RTC Section 60050.

⁹ RTC Sections 6051.8 and 6201.8.

- 1.75% effective July 1, 2014, and thereafter.

The fuel tax swap provisions require the BOE to maintain revenue neutrality, so that the revenues derived from the increased gasoline excise tax and the increased sales and use tax on diesel equals the revenues that would have been derived had the gasoline sales and use tax partial exemption and the diesel fuel excise tax reduction, respectively, not occurred.

RTC Sections 7360 and 60050 require the BOE to annually adjust the gasoline and diesel fuel *excise* tax rates, respectively, either upward or downward, to maintain revenue neutrality. For gasoline, the BOE determines: (1) whether the sales and use tax revenue loss related to the partial exemption was fully offset by the adjusted rate, and (2) the projected sales and use tax revenue loss for the next FY, considering forecasted gasoline prices and consumption.

For diesel fuel, the BOE determines: (1) whether the revenue gain from the increased sales and use tax rate on diesel fuel sales and purchases was fully offset by the adjusted diesel fuel excise tax rate, and (2) the projected sales and use tax revenue gain for the next FY, considering forecasted diesel fuel prices and consumption.

The BOE must determine the rate adjustments by March 1 each year, and the adjusted rate applies on the following July 1.

Proposed Law: For the period May 15, 2016 through May 15, 2020, this bill eliminates the requirement that the BOE adjust the gasoline and diesel excise tax rate. Instead, the bill requires the DOF to calculate those rates for that five FY period, 2016-17 through 2020-21.

The bill requires the DOF to notify the BOE of the calculated rates each May 15 beginning 2016, through 2020.

The BOE's current fuel tax swap rate calculation responsibilities would resume for FY 2021-22.

This bill becomes effective January 1, 2016.

Background: The fuel tax swap requires the BOE to determine the excise tax rates for gasoline and diesel fuel on an annual basis. The legislation set the excise tax rate for the first year of the swap and required the BOE to adopt a "revenue-neutral" excise tax rate for each ensuing FY. The calculation requires the BOE staff to develop a forecast of both consumption and price for both gasoline and diesel fuel. Staff works closely with DOF and adopts DOF's consumption forecasts.

BOE's rate calculation also takes into account the "true-up" portion, which is the one-year look back period to determine the difference between what was estimated for the previous FY and what was actually collected.

Since the fuel tax swap enactment, the BOE has adjusted the gasoline excise tax rates to maintain the required revenue neutrality through incremental increases and decreases as follows:

July 1, 2011: Increase of \$0.004

July 1, 2012: Increase of \$0.003

July 1, 2013: Increase of \$0.035

July 1, 2014: Decrease of \$0.035

July 1, 2015: Decrease of \$0.060

The BOE adjusted the diesel fuel excise tax rate with both increases and decreases, as follows:

July 1, 2012: Decrease of \$0.03

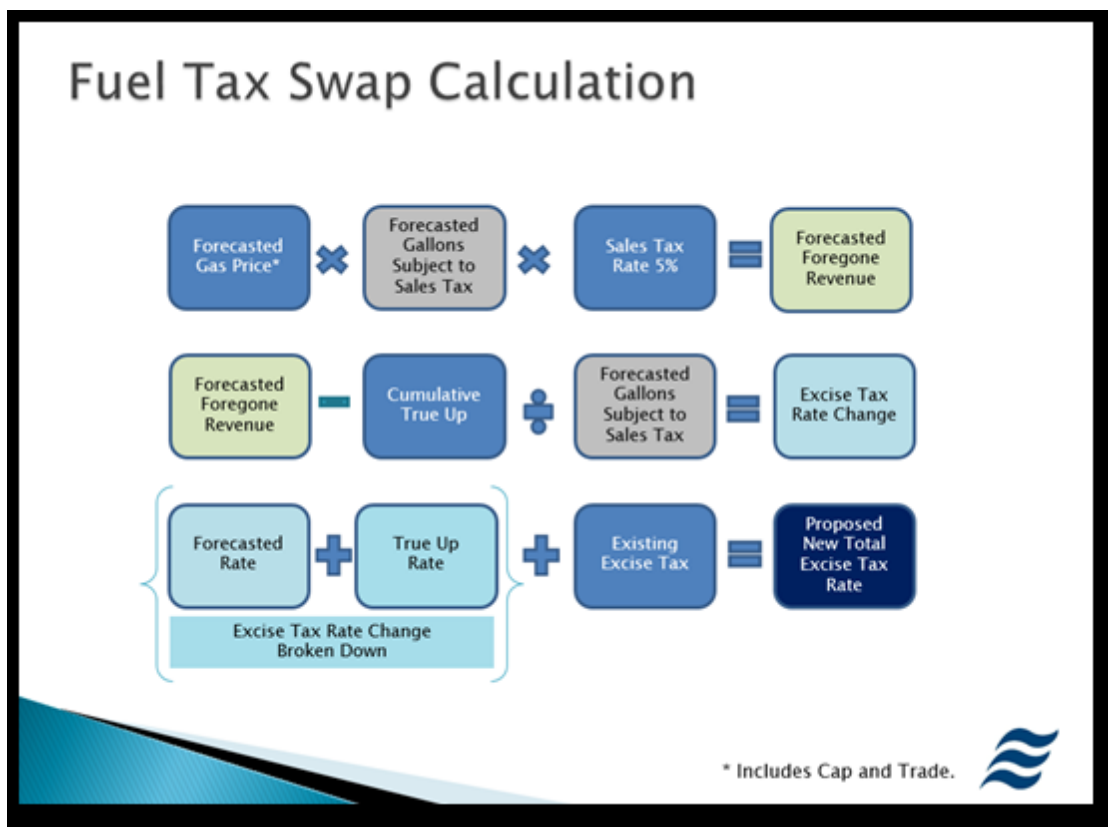
July 1, 2013: Retain July 1, 2012 rate

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

July 1, 2014: Increase of \$0.01

July 1, 2015: Increase of \$0.02

The following chart depicts the fuel tax swap calculation:



Commentary:

- Effect of the bill.** The DOF, instead of the BOE, would determine the excise tax rate adjustment for gasoline and diesel fuel under the “fuel tax swap” provisions for FYs 2016-17 through 2020-21.
- The May 7, 2015 amendments** limit the DOF’s calculation for the fuel tax swap to FY’s 2016-17 through the FY 2020-21, after which the BOE would again resume those duties.
- The DOF currently provides pertinent information.** As the Governor’s chief fiscal policy advisor, the DOF ensures California’s financial integrity. It prepares economic forecasts and analyses of various economic developments, and uses the most widely accepted forecasting methodology. Since enactment of the “fuel tax swap,” the BOE staff applies the DOF’s fuel consumption estimates and forecasted prices to determine the necessary rate adjustment for revenue neutrality purposes. As stated above, while it is appropriate that the DOF, rather than the BOE, calculate the adjusted rates, the limited five year period could allow the Legislature to determine which agency can best perform the calculations.
- The BOE would continue to provide notices and information about the adjusted fuel tax rates.** While the DOF is responsible for the rate setting functions for the five year period, the BOE would continue to be responsible for notifying the affected taxpayers, industries, and the general public.
- Related bills.** [SB 16](#) (Beall) would impose a \$0.10 per gallon surtax on gasoline, and \$0.12 per gallon surtax on diesel for five years. [SB 321](#) (Beall) authorizes the BOE to make specified adjustments to the gasoline tax swap rate using a five-year average fuel price estimate. Under specified conditions, authorizes more frequent rate adjustments, but no more frequently than every six-months.

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Administrative Costs: This bill could result in cost savings to the BOE related to the fuel tax swap calculations, which include the calculation, review, presentation, and decision making.

Revenue Impact:

This bill does not affect motor vehicle fuel or diesel fuel tax revenues.